

[EXECUTION COPY]

**AGREEMENT BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE  
REPUBLIC OF COSTA RICA REGARDING A DEBT-FOR-NATURE SWAP PROGRAM UNDER THE  
U.S. TROPICAL FOREST CONSERVATION ACT**

The Government of the United States of America and the Government of the Republic of Costa Rica,

*Seeking to* facilitate the conservation, protection, restoration, and sustainable use and management of tropical forests in Costa Rica, which provide a wide range of benefits to humankind,

*Noting* that rapid rates of tropical deforestation and forest degradation continue to be serious problems in many regions of the world,

*Recognizing* that the restructuring of external debt in the context of broader economic reforms can result in increased protection for tropical forests,

*Wishing to* ensure that resources from debt restructuring will be used for the conservation of tropical forests,

*Further recognizing* the role played by Conservation International Foundation and The Nature Conservancy in tropical forest protection in Costa Rica, and the success of non-governmental organizations in Costa Rica in conserving and managing tropical forest land in Costa Rica,

*In consideration* of the Debt Reduction Payment by the Government of the United States and the restructuring of the debt obligation owed to the U S Agency for International Development by the Central Bank of Costa Rica,

*In furtherance of* the goals of the U S Tropical Forest Conservation Act of 1998, Public Law No 105-214, as amended, and the Foreign Operations, Export Financing, and Related Programs Appropriations Act for U S fiscal year 2005, as contained in Public Law No 108-447, and

*Acknowledging* that the U S Tropical Forest Conservation Act of 1998 establishes in the U S Department of the Treasury a "Tropical Forest Facility" for the administration of debt reduction involving, inter alia, concessional loans extended by the U S Agency for International Development

Have agreed on this 13<sup>th</sup> day of September, 2007, and contract as follows

## ARTICLE I DEFINITIONS

1     Defined Terms     The capitalized terms contained and used in this Agreement shall have the respective meanings ascribed to them in this Section 1.1 and elsewhere in this Agreement. If a capitalized term is not defined in this Agreement and it is defined in the Swap Fee Contractual Agreement, Debt Swap Agreement, or the Forest Conservation Agreement, then it shall have the meaning ascribed to it in the Swap Fee Contractual Agreement, Debt Swap Agreement, or the Forest Conservation Agreement, as applicable

(a)     “Administrator” has the meaning ascribed to it in the Forest Conservation Agreement

(b)     “Agreement” means this Agreement between the Government of the United States of America and the Government of the Republic of Costa Rica Regarding a Debt-for-Nature Swap Program under the U.S. Tropical Forest Conservation Act, as it may be amended from time to time

(c)     “CBCR” means the Central Bank of Costa Rica

(d)     “Closing” has the meaning set forth in Section 2.3 of the Debt Swap Agreement

(e)     “Closing Date” has the meaning set forth in Section 2.3 of the Debt Swap Agreement

(f)     “CI” means Conservation International Foundation, a nonprofit corporation organized under the laws of the State of California in the United States of America, and any of its successors

(g)     “Debt Reduction Payment” means the transfer of twelve million, six hundred twenty-four thousand, three hundred thirty-three US Dollars (US\$12,624,333) by the U.S. Department of the Treasury from the Debt Restructuring Account to the USAID Account

(h)     “Debt Service Account” has the meaning set forth in the Debt Swap Agreement

(i)     “Debt Swap Agreement” means the Agreement between the Government of the United States of America and the Central Bank of Costa Rica Regarding a Debt-for-Nature Swap with Respect to Certain Debt Owed by the Central Bank of Costa Rica to the Government of the United States of America”, dated as the date hereof, as it may be amended from time to time

(j)     “Forest Conservation Agreement” means the Forest Conservation Agreement among the Government of the Republic of Costa Rica, the Central Bank of Costa Rica, The Nature Conservancy, and Conservation International

Foundation, dated as of the date hereof, as amended from time to time

(k) "FCA Obligations" has the meaning set forth in the Debt Swap Agreement.

(l) "GOCR" means the Government of the Republic of Costa Rica, acting primarily in this Agreement through the Ministry of Finance.

(m) "Oversight Committee" has the meaning ascribed to it in the Forest Conservation Agreement

(n) "Party" means either the USG or the GOCR, and "Parties" means, collectively, the USG and the GOCR

(o) "Swap Fee Contractual Agreement" means the Swap Fee Contractual Agreement among the Government of the United States of America, Conservation International Foundation, and The Nature Conservancy, dated as of the date hereof.

(p) "TFCA" means the U.S Tropical Forest Conservation Act of 1998, Public Law No 105-214, as amended

(q) "TFCA Evaluation Sheet" means a measure of TFCA program effectiveness designed by USG in its sole discretion, as it may be reasonably amended by USG from time to time

(r) "TNC" means The Nature Conservancy, a nonprofit corporation organized under the laws of the District of Columbia in the United States of America, and any of its successors

(s) "Trustee" has the meaning ascribed to it in the Forest Conservation Agreement

(t) "USG" means the Government of the United States of America, acting primarily through the U S Department of the Treasury

## ARTICLE II CLOSING

21 Conditions Precedent of the USG The obligation of the USG to make the Debt Reduction Payment at the Closing shall be subject to the fulfillment or waiver on or prior to the Closing Date of the following conditions, each of which shall be performed to the satisfaction of the USG

(a) Swap Fee Contractual Agreement TNC and CI shall have executed and

delivered the Swap Fee Contractual Agreement, such agreement shall be in full force and effect as of the Closing Date, and TNC and CI shall have duly performed and complied in all material respects with all agreements, covenants and conditions required to be performed or complied with by it under the Swap Fee Contractual Agreement as of the Closing Date, and

(b) Forest Conservation Agreement The Forest Conservation Agreement shall have been executed and delivered by the parties thereto and the transactions contemplated in Section 3 thereunder shall have been consummated prior to, or concurrently with, the Closing, and the conditions to closing set forth in the Forest Conservation Agreement shall have been satisfied or waived

(c) Debt Swap Agreement The Debt Swap Agreement shall have been executed and delivered by the parties thereto and the transactions completed thereunder shall have been consummated prior to, or concurrently with, the Closing, and the conditions to closing set forth in the Debt Swap Agreement shall have been satisfied or waived

(d) Other Documents USG shall have received from GOCR such further documents, opinions and certificates as USG shall reasonably request

### ARTICLE III COVENANTS OF THE GOCR

- 3.1 Imposition of Taxes The execution and delivery of this Agreement and the payment of the FCA Obligations to the Debt Service Account are not currently taxed or are exempt under the laws of Costa Rica from any taxes, duties, fees, levies or other assessments or charges ("Taxes") imposed by the GOCR or any other local government, taxing authority, or subdivision thereof
- 3.2 Consultation The GOCR agrees to consult with the USG, CI, TNC, and the CBCR before undertaking any action that could reasonably be expected to affect the activities of the Administrator, the Trustee, or the Oversight Committee
- 3.3 Financial Reports The GOCR agrees to forward to the USG, within thirty (30) days of receipt, all activity reports, financial audits and other reports from the Administrator or the Trustee required by the Forest Conservation Agreement. The USG acknowledges that reports received from the Administrator or Trustee will fulfill the GOCR's obligation to provide those reports to the USG
- 3.4 Audits and Evaluations The GOCR agrees to make its best efforts to assist the USG in the satisfactory performance of any audits and evaluations of the Costa Rica TFCA program deemed necessary by the USG in its sole discretion. Such audits and evaluations may be in addition to audits and evaluations required under the Forest Conservation Agreement. The GOCR further agrees to make its best efforts to assist the USG in obtaining any information requested by the USG for purposes of such audits and

evaluations (such as the TFCA Evaluation Sheet) The GOCR also agrees to make its best efforts to assist the USG in remedying any deficiencies identified by the USG in the performance of the Costa Rica TFCA program through any such audits and evaluations (including the TFCA Evaluation Sheet) The USG agrees to consult with the Oversight Committee on the existence of deficiencies identified through such audits and evaluations (including the TFCA Evaluation Sheet) and on the solutions to such deficiencies

- 3 5 Notice of Amendment The GOCR shall promptly notify the USG of any proposed amendment to the Forest Conservation Agreement The GOCR must obtain the USG's approval prior to adopting any such proposed amendment

#### ARTICLE IV CONSULTATION

Upon the written request of either Party, the Parties shall consult concerning the implementation or interpretation of this Agreement These consultations shall take place within thirty (30) days after a request for consultations is received from either of the Parties

#### ARTICLE V AMENDMENT AND NOTIFICATION

- 5 1 Amendment, Waiver This Agreement may be amended with the written consent of both Parties No provision of this Agreement may be waived orally, but only by a written instrument signed by the Party against whom enforcement of such waiver is sought A failure or delay in exercising any right, power or privilege in respect of this Agreement shall not be presumed to operate as a waiver, and a failure or delay in exercising a single or partial exercise of any right, power or privilege shall not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege
- 5 2 Notice All notices, consents, requests, instructions, approvals, and other communications provided for herein shall be in writing and shall be deemed validly given (a) on the date of delivery when delivered by hand, (b) on the date of transmission when sent by facsimile transmission during normal business hours with telephone confirmation of receipt, or (c) on the date of receipt in accordance with the records of receipt of a reputable overnight courier that maintains records of receipt, all addressed as set forth below (or to such other address as any Party shall have designated by notice in accordance with this Section 5 2 to the other Party)

(a) To the USG

Deputy Assistant Secretary for International  
Development Finance and Debt  
U S Department of the Treasury  
1500 Pennsylvania Avenue, N W  
Washington, D C 20220 U S A

(202) 622-0070 (telephone)  
(202) 622-0658 (facsimile)

(b) To the GOCR

Tesoreria Nacional  
Ministerio de Hacienda  
Avenida 2da, Calles 1 y 3  
San Jose, Costa Rica  
(506) 284-5000 (Telephone)  
(506) 233-3662 (Facsimile)  
Attn Jose Adrian Vargas Barrantes

- 5 3 Counterparts. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one instrument. This Agreement shall not be effective unless and until signed by each party hereto.

#### ARTICLE VI ENTRY INTO FORCE AND TERMINATION

- 6 1 Entry into Force. This Agreement shall enter into force on the date of the last signature below ("Effective Date"). Each Party's signature below evidences that all necessary domestic legal requirements for entry into force of the Agreement shall be fulfilled under the respective Party's laws.
- 6 2 Termination. This Agreement shall terminate (a) on September 28, 2007, if the Closing shall not have occurred before that date, or (b) if the Closing has occurred, upon the distribution as grants of all funds paid by the CBCR to the Trustee. In addition, a Party hereto may terminate this Agreement upon or after the termination of the Forest Conservation Agreement, the Debt Swap Agreement, and the Swap Fee Contractual Agreement, provided that the Party intending to terminate this Agreement (i) notifies the other Party by notice seven calendar days in advance of the requested termination date which shall be a Business Day ("Termination Date"), and (ii) is not in default under this Agreement, the Forest Conservation Agreement, the Debt Swap Agreement, or the Swap Fee Contractual Agreement.

[End of text, signature page follows]

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have executed and delivered this Agreement

DONE at San Jose, Costa Rica, in the English language, this 13th day of September, 2007.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

  
Date: 9-13-07

FOR THE GOVERNMENT OF THE  
REPUBLIC OF COSTA RICA:

  
Date: Set 13, 2007

